

Service Occupation Tax liability is incurred when tangible personal property is transferred incident to sales of service. See, 86 Ill. Adm. Code 140.101. (This is a GIL.)

August 28, 2000

Dear Xxxxx:

This letter is in response to your letter received on July 27, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 (b) and (c), which can be found on the Department's Web site at www.revenue.state.il.us/legalinformation/regs/part1200.

In your letter, you have stated and made inquiry as follows:

COMPANY is located in CITY/STATE. The nature of our business is to respond to any spill incident that may occur in any residential, commercial building, roads and highways. We used supplies in clean-up of such spills. Some of these incident happened in Illinois State.

We would like to inquire from your office, if this kind of service is subject to Illinois sales tax.

We hope to hear from you pertaining to this matter.

Service Occupation Tax liability is incurred when tangible personal property is transferred incident to sales of service. See the enclosed copy of 86 Ill. Adm. Code 140.101. If no tangible personal property is transferred incident to a sale of service, no Service Occupation Tax liability is incurred.

Under the Service Occupation Tax Act, the purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price of the tangible personal property being transferred; (2) 50% of the entire bill; (3) Service Occupation Tax on the cost price of the tangible personal property being transferred if they are registered de minimis servicemen; or (4) Use Tax on the cost price of the tangible personal property being transferred if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of

the tangible personal property transferred. Under the second method, if servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred incident to sales of service. They collect the corresponding Service Use Tax from their customers. They file returns and remit Service Occupation Tax to the Department.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See part (f) of the enclosed copy of 86 Ill. Adm. Code 140.101. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (including applicable local taxes) upon their cost price of the tangible personal property transferred incident to sales of service. They do not pay tax to suppliers, but instead provide them with Certificates of Resale. They file returns and remit Service Occupation Tax to the Department. They are required to collect the corresponding Service Use Tax from their customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. These servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

Servicemen incur Use Tax liability on the tangible personal property that they use or consume in performing services in Illinois. Your letter does not contain information regarding the types of tangible personal property used in performing services. However, exemptions to avoid multi-state taxation may apply. See 86 Ill. Adm. Code 150.310, enclosed. As you can see from subsection (a) (3) of this regulation, Use Tax does not apply to the use of tangible personal property in Illinois which is acquired outside Illinois and brought into this State by a person who has already paid a tax in another state in respect to the sale, use or purchase of such property, to the extent of the amount of such tax properly due and paid in the other state. In addition, as you can see from the provisions of Section 150.110 (enclosed), a reasonable amount is allowed for depreciation.

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We have also enclosed a copy of our regulation governing "Pollution Control Facilities." We cannot make a determination regarding its applicability because your letter contained no specific information about the nature of your business. This information may be of interest to you, however.

I hope this information is helpful. The Department maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110 (b).

Very truly yours,

Jerilynn Gorden
Senior Counsel, Sales & Excise Tax

Enc.